

Memorandum of Understanding between The Beal Companies, LLP (on behalf of its affiliates, One Ledgeмонт LLC and Two Ledgeмонт LLC, collectively, the "Applicant") and The Town of Lexington, Massachusetts ("Town")

March 19, 2009



The Applicant has filed for a rezoning of land entitled "Three Ledgeмонт Center, 97 Hayden Avenue, Lexington, Massachusetts PSDUP Filing" which has been placed on the warrant for the 2009 Annual Town Meeting as Article 49. As shown in the filing, Ledgeмонт Center as a whole is comprised of existing commercial buildings located on approximately 36 acres of land currently divided into two parcels (the "Property").

In the Preliminary Site Development and Use Plan of December 22, 2008 ("PSDUP"), the Applicant proposed mitigation measures in the Traffic Mitigation Plan (Section 2 of Appendix 4). The purpose of this Memorandum of Understanding ("MOU") is for the Applicant and the Town to reach agreement on those provisions having public benefit to the Town as well as benefit to the Property in order for these provisions to be substituted for Section 2 of Appendix 4 of the PSDUP to be voted on by Town Meeting and, if approved, to be submitted to the Attorney General of the Commonwealth of Massachusetts for approval.

I. Prior to issuance of a Building Permit for the Project:

The Applicant's proposed project at 97 Hayden Avenue (the "Project") consists of a new building and improvements called Three Ledgeмонт Center that will be constructed in conformance with the PSDUP approved by Town Meeting and a subsequent DSDUP if approved by the Zoning Board of Appeals.

1. Fixed Financial Contribution toward Traffic Mitigation Stabilization Fund

Prior to issuance of a Building Permit for the Project, the Applicant shall pay over to the Traffic Mitigation Stabilization Fund of the Town of Lexington, acting by and through the Board of Selectmen, a sum of five hundred thousand dollars (\$500,000) to fund off-site traffic and transportation mitigation improvements and/or services, enhance future traffic operations and benefit the Town, the neighborhood, and the Project, which may include but are not limited to the following:

- Design/Construct a traffic signal at Spring Street/Hayden Avenue intersection;
- Design/Construct sidewalks or traffic calming along Spring Street;
- Design/Construct sidewalks along Hayden Avenue;
- Design/Construct improvements/signal at Waltham Street/Hayden Avenue intersection;
- Design/Construct improvements/signal at Marrett/Spring Street.

The Town shall determine in its sole discretion the traffic and transportation mitigation improvements and/or services for which the \$500,000 shall be expended subject to Town Meeting appropriation.

2. Grant Application Assistance

The Applicant shall also cooperate with and support the Town in its application(s) to obtain grant financing or public monies for public infrastructure improvements in South Lexington (including those listed above), which may include applications to the Massachusetts Opportunity Relocation and Expansion (MORE) Program, Public Works and Economic Development (PWED) Program, Infrastructure Investment Incentive (I-Cubed) Program, and other programs offered by the Commonwealth.

II. Prior to issuance of a Certificate of Occupancy for the Project:

The PSDUP, and any subsequent DSDUP, shall include the following, which, prior to issuance of a Certificate of Occupancy for the Project, shall be completed in accordance with said plans and to the satisfaction of the Building Commissioner:

1. Circulation

The Applicant shall request adoption of vehicle turn prohibition signs on Spring Street that will limit movements in and out of the Ledgesmont driveway during peak periods of each day by the Board of Selectmen in accordance with the Town's Traffic Rules & Orders, as follows:

- A. A "NO LEFT TURN (graphical)" sign and supplemental plaque ("MON – FRI 7-9AM") will be mounted facing southbound Spring Street traffic. This is intended to prohibit the left turn movement from Spring Street into Ledgesmont Center during the morning peak hours of each business day, effectively directing the driver to use the Hayden Avenue entrance. This measure may also discourage the use of Spring Street to access the Property during that time.
- B. A "NO LEFT TURN (graphical)" sign and supplemental plaque ("MON – FRI 4-6PM") will be mounted facing traffic exiting the Ledgesmont Spring Street driveway. This is intended to prohibit the left turning movement out of that driveway during the evening peak hours of each business day, effectively encouraging the use of Hayden Avenue to exit the Property during that time.

All signs and plaques mentioned herein shall be purchased and installed by the applicant.

2. Monetary Payments

In addition to funds paid prior to issuance of a Building Permit for the Project (above), the Applicant shall pay to the Town, acting by and through the Board of Selectmen, a total of three hundred thousand dollars, comprised of the following;

- A. Two hundred thousand dollars (\$200,000) to the Town Transportation Demand Management/Public Transportation Stabilization Fund in complete satisfaction and under the same terms and conditions of the LexPress funding and services provisions contained in the third bullet point of Paragraph 3 (third page) of the Appendix 3 (Traffic and Transportation Plan) of the PSDUP,
- B. Eighty thousand dollars (\$80,000) to the Town's Traffic Mitigation Stabilization Fund, and,
- C. Twenty thousand dollars (\$20,000) to the Lexington Nature Trust Fund for the Town to construct and maintain the pedestrian trail extension to Spring Street, as described in the PSDUP dated December 22, 2008.

3. Monetary Adjustments

The Applicant and the Town agree, the Applicant's monetary payment to the Town Transportation Demand Management/Public Transportation Stabilization Fund hereunder totaling two hundred thousand dollars (\$200,000) shall be reduced by the amount of any new or increased traffic mitigation funding requirements adopted by the 2009 Annual Town Meeting that are applicable to the Project.

Additional Provisions:

Binding Effect. This Agreement shall be binding on the Applicant and its successors and assigns and on the Town, and it shall be incorporated into the PSDUP and DSDUP for the Project. This Agreement is for the mutual benefit of the Applicant and the Town, and any remedy provided at law or in equity may enforce it. This Agreement and the Lexington Zoning Bylaw shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible (subject always to the provisions of General Laws, Chapter 40A, as amended).

Applicant's Existence and Authority. The Applicant is a Massachusetts limited liability partnership duly formed, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

This Agreement constitutes a valid and legally binding obligation of the Applicant and the Town, enforceable against the Applicant and the Town in accordance with its terms, and neither the execution, delivery, or performance of this Agreement, nor compliance herewith, conflicts with or will conflict with, or results or will result in, a breach of, or constitutes or will constitute, a default under, (i) the organizational

documents of the Applicant, (ii) any law or any order, writ, injunction or decree of any court of governmental authority, (iii) any agreement or instrument to which the Applicant is a party by which it is bound.

Dispute and Default. In the event of any dispute or default hereunder, the losing or defaulting party shall reimburse the prevailing party for its costs and expenses, including without limitation court costs and attorney's fees.

Cooperation. The Applicant hereby agrees to continue to work cooperatively with the Town on an ongoing basis to implement both the specific provisions and the intent and purposes of this Agreement.

Time is of the Essence. Time shall be of the essence of this Agreement.

Permitting. The execution and delivery of this Agreement does not constitute an agreement by the Town that any necessary permit or approval for the Project will in fact be granted. Any provision of this Agreement may be incorporated into and made a condition of any permit or approval granted by the Town.

Amendment of Agreement. This Agreement may not be amended, modified or terminated except by a written instrument executed by the Applicant and by a majority of the Board of Selectmen.

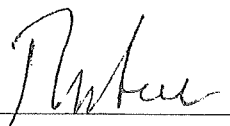
Enforcement; No Waiver. The failure of the Town to enforce this Agreement shall not be deemed a waiver of the Town's or the Applicant's right to do so thereafter. If any provision of this Agreement or its applicability to any person or circumstances shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.

Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

Applicable Law. This Agreement shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Superior Court in and for the County of Middlesex, and the Applicant hereby agrees to the jurisdiction of such court.

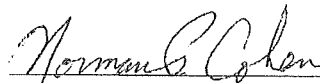
Signed:

Beal Companies LLP

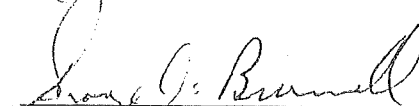


Robert L. Beal, President

TOWN OF LEXINGTON
BOARD OF SELECTMEN

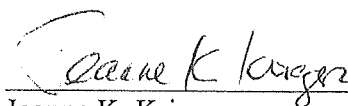


Norman P. Cohen, Chairman



George A. Burnell

Peter C. J. Kelley



Jeanne K. Krieger



Hank Manz